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ATTORNEYS FOR PLAINTIFF

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

**KIMBERLY S. SETHAVANISH, on behalf
of herself and all others similarly situated,**

Plaintiff,

v.

**ZONEPERFECT NUTRITION COMPANY,
a Delaware corporation,**

Defendant.

CASE NO.: 3:12-CV-02907

CLASS ACTION

**STIPULATION AND ~~[PROPOSED]~~
ORDER REGARDING
SUPPLEMENTAL SUBMISSION AND
EXTENDED DEADLINES FOR CLASS
CERTIFICATION BRIEFING AND
HEARING**

IT IS SO ORDERED AS MODIFIED

1 WHEREAS, on April 26, 2012, Plaintiff filed a Complaint in the above-captioned case in the
2 Sonoma County Superior Court of California.

3 WHEREAS, on June 5, 2012, Defendant removed the case to this Court (Dkt. No. 1).

4 WHEREAS, on December 28, 2012, the Court granted in-part and denied in-part
5 Defendant's motion to dismiss (Dkt. No. 38).

6 WHEREAS, on January 25, 2013, the Court held a status conference and set the following
7 schedule for class certification that provided the parties time between opening, response, and reply
8 briefs to take discovery of any experts who submitted reports in conjunction with class certification
9 briefing:

- 10 • Plaintiff's Motion to Certify Class to be filed July 2, 2013;
- 11 • Defendant's Opposition due by August 21, 2013;
- 12 • Plaintiff's Reply due by October 10, 2013;
- 13 • Motion Hearing Date November 8, 2013 at 10:00 a.m. (Dkt. No. 46).

14 WHEREAS, on March 27, 2013, the Supreme Court of the United States issued a ruling in
15 *Comcast Corporation, et al. v. Behrend, et al.*, 133 S. Ct. 1426, 1434, 185 L. Ed. 2d 515, 523, 57 CR
16 1487 (2013), holding that on class certification, any proposed method for calculating damages
17 submitted as part of class certification must provide a methodology that identifies damages that are
18 the result of the alleged wrong.

19 WHEREAS, on July 2, 2013, Plaintiff filed her motion for class certification but did not
20 submit any expert report for the purpose of showing that restitution could be calculated on a class-
21 wide basis. (Dkt. No. 65).

22 WHEREAS, subsequent to the Supreme Court's holding in *Comcast*, courts ruling on
23 motions for class certification have held in those cases that plaintiffs must submit a report from an
24 expert to show that the purported class-wide damages are linked to the plaintiff's theory of liability.

25 WHEREAS, the Parties have conferred about other courts' interpretation of *Comcast* and
26 have agree that Plaintiff may provide a supplemental submission including an extra five (5) page
27 brief and expert report(s) on the issue of class-wide damages in this action.
28

WHEREAS, the Parties agree to extend the class certification briefing schedule and page limits to account for the supplemental submission on damages, any necessary rebuttal report(s), replies and any allowed sur-replies regarding the issue of class certification on the following schedule:

- Plaintiff to submit any supplemental brief up to five (5) pages and any expert disclosures and report(s) on damages for the purpose of class certification, due by August 14, 2013;
- Defendant to submit any responsive brief not to exceed thirty (30) pages, along with any expert disclosures and report(s) submitted for the purpose of class certification, due by September 27, 2013;
- Plaintiff to submit any reply brief not to exceed twenty (20) pages, along with any rebuttal expert report(s) to Defendant's expert report(s) submitted for the purpose of class certification, due by November 8, 2013;
- Defendant to submit any sur-reply not to exceed fifteen (15) pages limited to the issues raised in any rebuttal expert report(s) or other new matter in the reply submitted by Plaintiff, due by December 20, 2013;
- Motion Hearing Date January 24, 2014 at 10:00 a.m.

WHEREAS, there have been no modifications to the class certification submission schedule. However, the Court has modified other scheduling matters as follows: On June 25, 2012, the Court extended the deadlines for briefing on Defendant's motion to dismiss (Dkt. No. 13) and on November 8, 2012, the clerk rescheduled a Case Management Conference for November 16, 2012 to January 25, 2013 pending the outcome of Defendant's motion to dismiss. (Dkt. No. 36).

IT IS HEREBY STIPULATED AND AGREED that Plaintiff shall file supplemental brief not to exceed five (5) pages and any expert disclosures and report(s) for the purpose of class certification by August 14, 2013; Defendant shall file any opposition to Plaintiff's motion for class certification not to exceed thirty (30) pages along with any expert disclosures and report(s) by September 27, 2013; Plaintiff shall file any reply brief regarding class certification not to exceed twenty (20) pages and any rebuttal expert report(s) to Defendant's expert report(s) by November 8, 2013; Defendant shall file any sur-reply not to exceed fifteen (15) pages limited to the issues raised in any rebuttal expert report or other new matter in the reply filed by Plaintiff by December 20,

2013. If Plaintiff does not file any rebuttal expert reports along with her reply, Defendant will not be permitted to file a sur-reply without further leave of court.

IT IS SO STIPULATED.

DATED: July 31, 2013

FEINSTEIN DOYLE PAYNE
& KRAVEC, LLC

By: s/Joseph N. Kravec, Jr.
Joseph N. Kravec, Jr. (*pro hac vice*)

Attorneys for Plaintiff
KIMBERLY S. SETHAVANISH

DATED: July 31, 2013

By: s/Jonathan D. Brightbill via email consent
Jonathan D. Brightbill (*pro hac vice*)
Elizabeth L. Deeley
Gregg F. LoCascio, P.C. (*pro hac vice*)
Michael J. Podberesky (*pro hac vice*)

Attorneys for Defendant
ZONEPERFECT NUTRITION COMPANY

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATE: July 31, 2013

